

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

BMG OIL SERVICES
6938 Rending Street
Long Beach, California 90815

11621 Westminster Avenue
Garden Grove, California 92703

6285 E. Spring Street #277
Long Beach, California 90808

Respondent.

Docket HWCA 2007-1456

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to BMG OIL SERVICES (Respondent).

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 11621 Westminster Avenue, Garden Grove, California (Site).

1.3. Inspection. The Department inspected the Site on April 5 and 23, 2007.

1.4. Authorization Status. Respondent is a registered transporter of hazardous waste with a registration # 4537 that will expire on April 30, 2008.

1.5. Jurisdiction. Health and Safety Code, section 25187, subdivision (a), authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or

requirement issued or adopted pursuant thereto.

2. DETERMINATION OF VIOLATIONS

2.1. The Department has determined that:

2.1.1. Respondent violated Health and Safety Code, section 25160.2 subdivisions (b), (1)(3) and (5), in that, on or about April 5, 2007, and April 23, 2007, Respondent failed to prepare a separate manifest by each vehicle driver with respect to each change of driver or transport vehicle operated by that driver for each day; attach the legible receipts for each quantity of hazardous waste received from the generator to the front of manifest; and, enter the total volume of each waste stream transported on the manifest at the change of each date, driver, or transport vehicle;

2.1.2. Respondent violated Health and Safety Code, section 25160.2, subdivision (d)(2) in that, Respondent failed to submit quarterly reports to the Department within 30 days after the end of each quarter for three and on-half years prior to and including March, 2007.

2.1.3. Respondent violated Health and Safety Code, section 25163, subdivision (a)(2), and California Code of Regulations, title 22, section 66263.17, subdivision (a), in that, during the period, January 30, 2007 to March 16, 2007, Respondent transported hazardous wastes without a valid and current registration issued by the Department.

2.1.4. Respondent violated Health and Safety Code, section, 25201, subdivision(a), and section 25153.6, subdivision (b); and, California Code of Regulations, section 66270.1, subdivision (b), in that on and before April 5, 2007, and April 23, 2007:

(a) Respondent consolidated drummed hazardous wastes without authorization from the Department; and,

(b) Respondent consolidated drummed hazardous wastes at an unauthorized

location.

2.1.5. Respondent violated Health and Safety Code, section 25201, subdivision (a), in that, on and before April 5, 2007, and April 23, 2007, without a hazardous waste facility permit, Respondent:

(a) Held hazardous wastes over ten days located in area zoned by the local planning authority for industrial or commercial land use; and,

(b) Handled hazardous wastes outside of the normal course of transportation.

2.1.6. Respondent violated Health and Safety Code, section 25160, subdivision (b)(5)(A), in that Respondent failed to submit annual report including multiple generator identification numbers used in the consolidated manifests for the three years prior to April, 2007.

2.1.7. Respondent violated Health and Safety Code, section 25205.16, subdivision (c), in that Respondent failed to submit to the Department the information required by the statute to enable the Department to verify the accuracy of hazardous waste activity data for the two years prior to April, 2007.

3. SCHEDULE FOR COMPLIANCE

3.1. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT, within sixty days after the effective date of this Order:

3.1.1. Respondent shall submit, as to each generator manifest, legible receipts for each quantity of hazardous waste received during the previous twelve months. Receipts shall include the total volume of each waste stream transported on the manifest at the change of each date, driver, or transport vehicle.

3.1.2. Respondent shall submit to the Department the reports required by Health and Safety Code, section 25160.2, subdivision (d)(2), for each quarter during the three and on-half years prior to and including March, 2007.

3.1.3. Violation 2.1.3 has been corrected, no further action is required.

3.1.4. (a) Respondent shall remove all 55 gallon drums containing hazardous waste and empty 55 gallon drums including any size of containers stored at an unauthorized location.

(b) Respondent shall not store hazardous wastes for over ten days at the transfer facility without authorization from the Department.

3.1.5. Respondent shall submit to the Department the annual report required by Health and Safety Code, section 25160, subdivision (b)(5)(A) for the three years prior to April, 2007.

3.1.6. Respondent shall submit to the Department the annual questionnaire required by Health & Safety Code section 25205.16, subdivision (c), to verify the accuracy of hazardous waste activity data.

3.1.7. Respondent shall submit to the Department the information required by Health and Safety Code, section 25205.16, subdivision (c), for the two years prior to April, 2007.

3.1.8. Respondent shall comply with all terms, requirements, and conditions set forth in Section 5 (Penalty) below.

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent to:

Carmelita E. Lampino
Acting Branch Chief
Enforcement and Emergency Response Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 900630

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications will be communicated to Respondent in

writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this paragraph shall be extended by the term of the Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be

preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated into this Order upon approval by the Department.

3.12. Extension Request. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

4. OTHER PROVISIONS

4.1. Additional Enforcement Actions. By issuance of this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction involving either Respondent(s) or the Site.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties, and/or damages as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Consent Order.

4.5. Time Periods. "Days" for the purpose of this Order means calendar days.

4.6. Compliance with Waste Discharge Requirements. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

5. PENALTY

5.1. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$128,290.

5.2. Payment is due within 30 days from the effective date of the Order.

5.3. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown

in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Carmelita E. Lampino
Acting Branch Chief
Enforcement and Emergency Response Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 900630

and

James J. Grace
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

6. RIGHT TO A HEARING

6.1. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

7. EFFECTIVE DATE

7.1. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent submits a written request for a hearing within the twenty-day period.

Date of Issuance: 4/1/08

Original signed by Carmelita E.Lampino
Carmelita E. Lampino
Acting Branch Chief
Enforcement and Emergency Response
Program
Department of Toxic Substances Control